



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: Nebraska Service Center Date:

JAN 10 2000

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert W. O'Reilly

For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate at the [REDACTED]

[REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. degree in [REDACTED]. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the

committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner has submitted several witness letters. Professor [REDACTED] supervises the petitioner's research at [REDACTED]. Prof. [REDACTED] indicates that his laboratory seeks "to identify factors responsible for the initiation and progress of labor in primates, so that we may better understand the causes of preterm labor." Prof. [REDACTED] cites statistics and information regarding the sometimes-fatal dangers which preterm labor presents both to fetuses and mothers.

Clearly, the investigation of this problem possesses substantial intrinsic merit, and research into a solution is inherently national in scope. What remains to be shown is the importance of petitioner's contribution and involvement.

Prof. [REDACTED] continues:

[The petitioner] has contributed to the resolution of this grave health care issue by seeking to develop a drug to stop preterm labor. Currently there is no effective treatment to stop or delay preterm labor. [The petitioner's] research focuses on the new drug "oxytocin antagonist", which inhibits uterine contractions, thereby delaying labor and preventing premature delivery. In addition, he is studying ways to treat the cervix to prevent its premature opening at the onset of preterm labor. So far, this approach, in conjunction with the oxytocin antagonist, has proven to be very effective in preventing preterm labor in a primate model. [The petitioner's] exceptional contributions to my lab have allowed us to develop drugs that will be tested in clinical trials in the near future. . . .

Surely, without his contributions the work my laboratory engages in would suffer severely, including a devastating delay in the development of the oxytocin antagonist.

[REDACTED] Assistant Professor [REDACTED] states that the petitioner's doctoral research involving Polycystic Ovarian Syndrome "is extremely important," and she attaches the same phrase to the petitioner's work building a database to correlate premature birth rates with socioeconomic groups.

Dr. [REDACTED] Associate Professor at [REDACTED] states that he has collaborated with the petitioner for several years. Dr. [REDACTED] indicates that "because [the petitioner's] skills are so unique, it would be difficult for [REDACTED] to locate another researcher capable of carrying out the studies, [and] the project might actually be terminated without his continued collaboration."

Dr. [REDACTED] Associate Professor at [REDACTED] states:

[The petitioner's] doctoral research at [REDACTED] focused on Polycystic Ovarian Syndrome, a disease that leads to approximately 75% of the cases of female infertility. . . . [The petitioner's] research concentrated on the effects of a thyroid stimulating hormone on the ovaries, determining that this hormone played a key role in infertility. . . . [The petitioner's] research provided an important treatment alternative for this syndrome, thereby reducing the occurrence of infertility and other resulting medical problems. . . .

[Currently, the petitioner] is working to assess routine screening protocols to detect drug use and sexually transmitted diseases in pregnant women. . . . [The petitioner] has evaluated the cost efficiency of these tests, determining that the [redacted] tests may not always be necessary, and potentially saving health care resources.

Dr. [redacted] repeats the assertion that the petitioner's departure from the United States would delay or possibly terminate the current research project regarding preterm labor.

Professor [redacted] Chair of the Department of Biological Sciences at [redacted] supervised the petitioner's doctoral studies. Prof. [redacted] states that the petitioner's research into Polycystic Ovarian Syndrome "contributed greatly to the results my lab has been able to achieve," and that his findings regarding thyroid stimulating hormone "may advance the development of a cure for the disease." Prof. [redacted] concludes that the petitioner's "innovative research approaches represent important advances to the field. He has already made substantial contributions to women and children's health."

Dr. [redacted] an associate professor at [redacted] and a member of the petitioner's doctoral dissertation committee there, states that the petitioner's "hypothesis regarding the role of thyroid stimulating hormone in the development of Polycystic Ovarian Syndrome has been groundbreaking." Regarding the petitioner's current research at [redacted] Dr. [redacted] states that the petitioner's "continued employment at [redacted] is vital to this research because he is so uniquely qualified to attack these problems based on his unusual combination of specialties in medicine, obstetrics/gynecology, and statistics and mathematics."

The petitioner submits background information, which establishes the intrinsic merit of his work but does not address his contribution to the research. The petitioner also submits copies of his published articles and abstracts of conference presentations, but his initial submission contained no evidence (such as frequent citation by other researchers) to show that his published or presented work has significantly influenced other researchers or had a measurable impact outside of institutions where the petitioner has worked or studied.

The director instructed the petitioner to submit additional evidence of eligibility. In response, the petitioner has submitted additional background information and copies of further publications, along with two further letters, both from prior witnesses.

Professor [redacted] discusses the various benefits of reducing preterm labor and repeats his earlier assertion that the

petitioner's work has resulted in drugs which are soon to be tested. Prof. [REDACTED] states that the petitioner's "publications are used by others in our field to advance their research in premature labor," but provided no specific examples of such use.

Regarding the labor certification process, Prof. [REDACTED] states "my laboratory is very concerned that the delays involved in obtaining an alien labor certification would delay the work being done," but he does not explain why the petitioner cannot continue to work in nonimmigrant status while such a labor certification is pending, as permitted by the regulation at 8 C.F.R. 214.2(h)(16)(i). Therefore, the argument that labor certification would delay the petitioner's employment is not persuasive.

Professor [REDACTED] states that the petitioner's research "has been recognized by his colleagues as offering important contributions to the field" and has "stimulat[ed] a great deal of interest among our colleagues," but he offers no specific evidence to show significant interest in the petitioner's work outside from those professors who have instructed, supervised, or collaborated with the petitioner.

Both Prof. [REDACTED] and Prof. [REDACTED] maintain that the petitioner is an irreplaceable and vital member of his current research team.

The director denied the petition, citing a lack of evidence that "those outside the petitioner's circle of colleagues and acquaintances consider his work important." The director also indicated that the record "does not clearly show that the petitioner is the initiator or primary motivator behind still on-going research."

On appeal, the petitioner submits evidence of citation of his published work. Counsel asserts "the fact that the petitioner's research has been so oft cited further establishes the petitioner's great impact on the field." The petitioner also submits a copy of a New York Times article which states that the impact of a scientist's published work can be measured by the number of citations by other researchers.

The evidence submitted on appeal documents only two citations of the petitioner's published work, both appearing in the same article by a KSU faculty member. The evidence of the petitioner's citation record offers no support for counsel's assertion that "the petitioner's research has been . . . oft cited," and if viewed out of the context of the other documentation submitted on its appeal, appears to support the director's assertion that the petitioner's reputation and impact are largely limited to [REDACTED] and [REDACTED]

Evidence concerning the overall citation record of the journals where the petitioner's work has appeared is of secondary importance, because such evidence does not imply that any given article in such journals is heavily cited.

Counsel asserts, on appeal, that labor certification is unavailable because the petitioner's position at [REDACTED] is temporary. This argument is not persuasive as it raises the question of why permanent immigration benefits are necessary for the petitioner to retain an admittedly temporary position. The approval of the petition in this matter stems primarily from the independently-acknowledged significance of the petitioner's work, not from arguments that the petitioner's position is temporary or that the labor certification process would delay his work. As stated above, the proper remedy for these particular problems would appear to be a nonimmigrant visa.

The petitioner also submits additional witness letters. Prof. [REDACTED] states in his third letter that the petitioner "is the primary motivator behind a great deal of research central to the project at [REDACTED]" and that "the importance of [the petitioner's] research is not limited to his circle of colleagues, but his rather having a major impact on the field as a whole," as demonstrated by statements from independent witnesses.

Dr. [REDACTED] has been an associate professor at [REDACTED] since 1993, during which time the petitioner was a doctoral student there. Nevertheless, Dr. [REDACTED] asserts that he "do[es] not know [the petitioner] personally." Dr. [REDACTED] letterhead indicates that he works at a separate [REDACTED] campus in [REDACTED] whereas the petitioner apparently studied at [REDACTED] main campus in [REDACTED]. Dr. [REDACTED] states that the petitioner's "work prompted me to launch a new area of research on the role of the thyroid gland in the early development and maturation of the ovary."

Several additional witnesses deny knowing the petitioner personally. Dr. [REDACTED] Director of Obstetrics at [REDACTED] states that he has read the petitioner's work with interest and intends "to continue to follow [the petitioner's] work closely." Dr. [REDACTED] deems the petitioner "an invaluable resource to parturition research. His work has been of immense merit and has enabled me to advance my own research. He has an impeccable reputation in his field."

Professor [REDACTED] of the [REDACTED] states that the petitioner's "research work has been invaluable in our research laboratory." Professor [REDACTED] of [REDACTED] states that the petitioner's "work shows big promise and is very important to the endocrinology of pregnancy." Prof. [REDACTED] letter closes with the same paragraph as Dr. [REDACTED]'s letter, above, but the two letters

are not identical overall. It appears that an unidentified third party suggested the wording of certain passages in the letters.

While the evidence of record in this matter is not without its flaws and weaknesses, when viewed as a whole it demonstrates that the petitioner's research has had a significant impact on the work of other researchers who are unconnected with the petitioner. Witnesses of record have offered the persuasive argument that the petitioner's past achievements justify his continued presence in the United States even without a labor certification.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.